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HIGH COURT OF CHHATTISGARH: BILASPUR

(34)

Writ Petition (S) No. 6668 of 2006

Petitioner		Brij Kishore Mishra, age 61 about years, S/o. Shri Sambho Prasad Mishra, Retd. Assistant Teacher, R/o. Meganar (Tokapal), Dist. Bilaspur, CG.
	Versus	
Respondents	1)	State of Chhattisgarh, through the Secretary, Tribal Department & Education Department, D.KS. Bhawan, Raipur, CG.
	2)	Block Education Officer, Tlokpal, Tahsil & District – Jagdalpur, CG.
	3)	Joint Director (Treasury and Pension), Jagdalpur, Dist. Bastar, CG.
	4)	Sahayak Pariyojna Prashasak, Akikrit Adiwasi Vikas Pariyojna, Jagdalpur, District - Bastar CG.

(WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA)

(SB: Hon'ble Shri Justice Satish K. Agnihotri)

PRESENT:

Shri Ajay Shrivastava, counsel for the petitioner.
Shri Satish Gupta, Dy. Govt. Advocate for respondents/State.

ORAL ORDER

(Passed on 24th April 2007)

By this petition, the petitioner impugns the order dated 31-8-2006 (Annexure P/2) passed by the Joint Director (Treasury and Pension).

(35)

Jagdalpur, whereby it was ordered to recover a sum of Rs.41,833/- as excess payment from the petitioner.

2. The indisputable facts, in nutshell, are that the petitioner was working as Assistant Teacher. After completion of 24 years, the petitioner was granted second kramonnati in accordance with M.P Pay Revision Rules 1990 read with Order No.D-4/38/R-1-4 90, Bhopal, dated 4-2-90 issued by Finance Department, Government of M.P. vide order dated 17-7-2002 (Annexure P/1). The respondents/State has issued a circular on 24-4-2006 (Annexure R/1) which is, in terms, not applicable to the facts of the present case as the petitioner was granted benefit of second Kramonnati on 17-7-2002.

3. The State/respondents has relied on circular dated 24-4-2006 (Annexure R/1) to support the impugned order dated 31-8-2006 (Annexure P/2) passed by Joint Director (Treasury and Pension). In the said circular there is no mention that the benefit of second Kramonnati granted earlier be withdrawn or illegal etc.

4. The similar issue came into consideration before this Court in the matter of **Vidyadhar Tiwari Vs. State of Chhattisgarh in 2006 (1) MPHT 105 (CG)**, wherein it was held that excess amount, if any, is made to the petitioner, he was not at fault and the amount received by him might have been used by adjusting himself accordingly treating the same as his salary and notice was not issued. Even otherwise also, the petitioner was not afforded any opportunity of hearing before passing the impugned order.

(86)

5. The Supreme Court in the case of **Shyam Babu Verma and others Vs. Union of India and others, (1994) 2 SCC 521**, has held that the employees who have received higher scale due to no fault of theirs, it shall only be just and proper not to recover any excess amount already paid to them. In that case, the petitioners were given higher pay scale w.e.f. 1-1-1973, although only after a period of 10 years they became entitled to the higher pay-scale, but as they received higher scale since 1973, and the scale was reduced in the year 1984 w.e.f. 1-1-1973.

6. Again, the Supreme Court in the case of **Sahib Ram Vs. State of Haryana and others, (1995) Supp. (1) SCC 18,** held in para 5 as under:-

> "5. Admittedly the appellant does not possess the required educational qualification. Under the circumstances the appellant would not be entitled to the relaxation. The Principal erred in granting him in relaxation. Since the date of relaxation the appellant had been paid his salary on the received scale. However, it is not on account of any misrepresentation made by the appellant that the benefit of the higher pay scale was given to him but by wrong construction made by the Principal for which the appellant cannot be held to be at fault. Under the circumstances the amount paid till date may not be recovered from the appellant."

7. In another case, the Supreme Court in the case of **V. Gangaram Vs. Regional Joint Director and others, (1997) 6 SCC 139**, wherein the question of payment of increments on the basis of two qualifications namely M.A. and M.Ed. was involved and the petitioner was granted 4 increments for acquiring M.A. and M.Ed . qualifications, however, the petitioner was entitled to 2 increments for acquiring the said qualifications. The Supreme Court was of the view that excess amount liable to be recovered. In the above stated case, earlier decisions in the

(37)

case of Shyam Babu Verma (supra) and Sahib Ram (Supra) were not referred to.

8. Applying to the settled principle of law as stated above to the facts of the present case, the respondents have not established as to how the excess payment was made to the petitioner.

9. In view of the above stated facts and the decisions of the Supreme Court, the petition is allowed and the impugned order dated 31-8-2006 (Annexure P/2) directing recovery of the amount allegedly paid to the petitioner in excess, is hereby quashed. The petitioner is entitled to full pensionary benefits without any deductions. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Raju